

**Town of Superior  
Regular Council Meeting  
Thursday, March 1, 2012-7:00 P.M.  
Superior Senior Center  
360 W. Main Street, Superior, AZ 85173  
MINUTES**

**A. CALL TO ORDER**

Mayor Valenzuela called the meeting to order at 7:10 p.m.

**B. SALUTE TO THE FLAG**

Mayor Valenzuela led the salute to the flag.

**C. OPENING PRAYER**

Mr. Michael O. Hing led the opening prayer.

**D. ROLL CALL**

**Present:** Council Members Hank Gutierrez, Chris Tomerlin (arrived after roll call at 7:30 p.m.), John Tameron, Council Member Gilbert Aguilar, Mayor Jayme Valenzuela, Vice Mayor Olga Lopez; **Absent:** Council Member Soyla "Kiki" Peralta

**E. CONSENT AGENDA**

1. Approval of minutes for regular meeting of February 16, 2012
2. Blanket Permit, Michael Hing Family & Friends

Interim Town Clerk Rita Wentzel presented the items and introduced Mr. Michael O. Hing and Altin Hing. Mayor Valenzuela asked if there were any questions or comments on the minutes or permit. Vice Mayor Lopez asked Council Member Tameron about a statement by Council Member Tomerlin in the minutes re "it is not related to Apache Leap ..." and if that was said by Council Member Tomerlin or Mr. Tameron. Mr. Tameron said it was not him. Council Member Gutierrez said he thought he was the one who had said he agreed with Curt Williams.

**MOTION:** Vice Mayor Lopez moved to approve the minutes for the regular meeting of February 16 and the blanket permit. Council Member Aguilar seconded. **VOTE:** The motion carried 4-1 with Council Member Tameron, Mayor Valenzuela, Vice Mayor Lopez and Council Member Aguilar in favor. Mr. Gutierrez stated he had not had a chance to look through the minutes and was opposed.

**F. REPORTS**

None.

**G. COMMUNICATION**

1. Manager's Report-Interim Town Clerk-Rita M. Wentzel

**Copy of Certificates of Liability Insurance from the Superior Chamber of Commerce for the Apache Leap Mining Festival Beer Garden:** Ms. Wentzel referenced two certificates of liability insurance from the Chamber for the beer garden, as well as the certificate from the Optimists group, which is having an alcohol permit behind the senior center. Mr. Gutierrez said the certificate holder was incorrect on

the one from the Optimists. It should be the Town of Superior. Ms. Wentzel said that they had not corrected that yet but it would be corrected.

**Letter to Supervisor Rios regarding the Town's Political Sign Ordinance:** Ms. Wentzel referenced a February 22 letter from the town to Supervisor Pete Rios outlining what their requirements are for posting of political signs and that his had been posted too early.

**Increase in Our Refuse Service Fees Effective April 1, 2012:** Ms. Wentzel pointed out the fee increase. It has been posted on bills for three months. It will be implemented on the next billing cycle, April 1.

**Interview Results for Accounts Payable/Payroll Clerk Position:** Ms. Wentzel said they had 11 applicants and interviewed six who qualified. They have chosen an applicant. His name is Otis Lara. He is from Apache Junction. He has an MBA in finance and will start on Wednesday. They are excited to have him. He worked for a period of time with the Town of Gilbert, so he has not only municipal experience but a lot of financial background.

**Magma Club Rental Status:** Ms. Wentzel said there have been a lot of discussions and calls regarding the Magma Club. She wanted everyone to understand that the Magma Club is not ready for rental. She has asked Public Works Director Jed Lant to prepare a list of things to be done. They will start working on that as a priority.

**Update regarding the Public Safety Emergency Services Contract Payment of \$106,614.55:** Ms. Wentzel said they did bill for the Emergency Services Contract. Resolution Copper has a formula by which they provide that funding. As soon as the check is received they will pay for the police car, which is the biggest expense. They have both ambulances fixed and pay the current bills for public safety as well as anything that comes up in the next few weeks for public safety. They probably will only use about \$60,000 of that money. They will then re-assess what bills they may have to pay off or put in the general fund and start to pay off their excise money.

**Licensing Requirements:** Ms. Wentzel said that at the last meeting they had quite a few comments and some discussions regarding business licenses, state tax license requirements. She thinks she has gone to all the experts and gotten as much information as she could. Some of the things are not exactly as they would like as if some of the fiesta queens or people doing fund-raising are not under the church or the schools' tax id number or their checking account, they will be required to pay sales tax. So that is kind of sad news but they want to work together with the schools and the church to see if they can somehow do something there, or see if they can somehow have the Economic Development Corporation handle those activities and funding cycles because they will be a 501(c)3.

The other item that had come up was that the mom-and-pop food vendors who are sitting in their front yards or outside the Save Money Market and are actually selling food items do not require any licensing. They may require some health department oversight, but as far as licensing is concerned, that is considered food for home consumption. You purchase it and take it to your home to eat it. If somebody says they are having a bake sale and there is a table where you can eat the food, then all bets are off and they become taxable.

Mr. Tameron asked about the robotics club at the school. Did they fall under the school? Ms. Wentzel said it depended on whose tax ID they are using and where the money goes. If the school collects the money and puts it in their checking account with their tax ID number, they don't have a state tax requirement because school districts and municipalities are exempt from state sales tax as are nonprofit 501(c)3s and churches. Unfortunately, if they have their own treasurer and they handle their own money and they do not have the tax ID number that is affiliated with a nonprofit, municipality or school, their funding is taxable. Mr. Tameron asked if they know that. Ms. Wentzel said, "Not yet." She said she didn't know that until recently. They assumed that because they were

doing fundraising for a good cause they would be called a nonprofit but that is not the case for the state. Mr. Tameron said that so all these years that the school and other organizations have been doing this, they have been doing it wrong. Ms. Wentzel said that was correct.

#### H. CALL TO THE PUBLIC

**Lois Schablow:** Wanted to be sure everything had been disclosed about the land exchange. She is still confused about the land that is being swapped. She remembered reading about environmentally sensitive land that was going to be swapped. She thought it all started that they were going to have a place as a campground like they were going to give up. She thought that was the whole point of it. Now they were finding that it was somewhere else and environmentally unsafe. This hurts her to her heart because she was behind it and thought it was an excellent idea. Now she is hearing they are going to be getting money and it is going to be used for the town of Superior. Where do they go from here? Can they answer that question? Mayor Valenzuela said they can't answer back and would let her finish her comments and go from there. Ms. Schablow said she thought it was an excellent idea because they were going to get jobs out of it. It is not just about money, it is about bonding with their kids, making a better community. There are so many people with cancer dying in this little area. She wondered where they were all coming from. Also their kids are not doing so great either. They are getting into all kinds of terrible things. There is not a lot of future for them. They are all getting into drugs. It is horrible. It makes her want to know what kind of community they are going to have in the next 10 years.

**Jeannette Allison Wickwire:** Coming there with some major concerns. It has come to her attention since '91 that they are having arsenic cleanup and there is no awareness by the community except BHP and a few residents on the northwest side. The testing for this arsenic was done in '90, '97, '01, '03, '04 and '07. Why did it take so long and why aren't they doing some kind of signage? Why wasn't the work study available in the library until three weeks ago? Why is there no information to the community about what arsenic does to the body? It causes cancer and breakdown to the bladder and kidneys, IQ loss and red and white blood cell reduction. Also she would like to know how does BHP get away with telling them at a meeting they don't have to follow any kind of disclosure law? That is a bad situation for the town. A friend of hers moved in recently and no one told her there was arsenic there. BHP is making its own workers wear safety equipment. She thought the community and town council should look into it. She would like to see signage at the tailings.

**Brenda Farthing:** Commented about a meeting re the cleanup and briefly discussed in response to a question by the mayor. But she said that was not why she was there. She discussed an allegation of excessive police force she had previously brought to the council. If this kind of thing continues it will cost the town quite a bit of money because of a wrong decision by one individual. Mayor Valenzuela inquired as to whether a complaint had been filed. Ms. Farthing said she believed her niece had but may have not wanted to go alone. She would make arrangements.

**Teresa Rangel Velasquez:** Said she was a teacher at Head Start. Several years ago Head Start had adopted a road. They do an annual trash pickup and then walk to the park to have lunch. They request that the street crew block both sides of the road to keep the children safe and be at the park so the children can use the restroom. The city crew had always done this for them and they appreciate that they have always accommodated their request. She was there to ask to have the fee waived. The service that oversees Head Start is a nonprofit agency. They would need to have the road blocked from 8 to 10 a.m. and use the restroom from 10 a.m. to noon on April 19. Mayor Valenzuela said they would direct her to work with Ms. Wentzel and he was sure everything will be in place and the street crew will block off the street and do as they have done in the past for the children to be safe.

**Bill Holmquist:** Was there with good news: somebody is going to rebuild the Magma Hotel. He wanted to talk about how exciting it is to have somebody come into the town and rebuild the most important building ever in the history of Superior and put that much money into it. The brick building is going to

have upper and lower rooms and the lobby will be rebuilt. He knows the developers are looking for photographs of the interior so they can recreate exactly how the lobby looked. Next to the lobby there is going to be a dining area. Next to that is going to be a kitchen and bathroom. There is going to be a restaurant and bar. He discussed the variances for the porch and rooms on the first floor as well as parking. The Magma Hotel is on its last legs. If it doesn't get done, it is going to be looking like the Uptown Theater. He was there to support the project.

**Leslie Martin:** Said she was a business owner on Main Street and thought Mr. Holmquist said it just right. She is so excited about the renderings from the architect for the Magma Hotel. She thought it would be a cornerstone, bring business, jobs and tourists. She knows there is a conditional use permit necessary and variances. She is glad to see they are going through the process through Planning and Zoning. She hopes the council supports this. She hopes the town does everything it can to bring this building to Superior.

**Freddie Miramon:** Made public comment in regard to the alcohol permits granted at the last council meeting. He was one of the attendees at the Substance Abuse Coalition meeting that took place last year. Some of the council members were there, residents, some pastors, a lot of community stakeholders. Part of it was to brainstorm some sort of intervention or prevention of alcohol/substance abuse in Superior. There seems to be a problem. He finds it hard to accept that the permits were given to the two nonprofit organizations to take place due to the fact of knowing there is a problem in Superior and also that no community assessment took place. He believed a community assessment should have taken place involving community stakeholders, including the churches, public schools and residents.

**Sonnie Sansom:** Said he was a businessman with a property on Main Street. From the time he opened his business in the town center, there was no question of parking requirements. He has counted 93 parking spaces, including handicapped, from Porphyry to Magma Avenue. Along this section of town he has not found a variance request or a variance given. So, why is the town requiring the Magma Hotel to have a parking variance? The Magma Hotel has always had rooms on the first floor for guests and the corner building originally had a balcony over the sidewalk, which does not create any more liability than windows on the second floor. A pedestrian walking on the sidewalk would be shielded. He made further comments about a town decision done without a variance and said it appears to like picking and choosing who to apply the rules to and which codes are applied. An investor comes into town and wants to fix the hotel. After talking to a number of citizens, they agree with him that the Magma Hotel owner should be given the same consideration as he and other business owners have received in the town center. There are only so many street parking spaces in the town center and it is up to the town to provide parking spaces. If they want extra parking, the town should build a lot. The Magma Hotel investor appears to be planning a large investment in the town so they should pass all three requested variances with no exceptions and get a hotel in Superior that is necessary. If you want weddings, etc., in your Magma Club, you've got to have sleeping rooms. He would rather have parking problems in Superior than continue to deal with falling down buildings for another 10 years.

**Sue Anderson:** Responded to Mr. Miramon's comments about the alcohol permit. The Chamber of Commerce is one of the groups that applied for that for the Apache Leap Mining Festival. Others had expressed the concerns at the last meeting and the Chamber had listened to their concerns carefully and spent a lot of time thinking about it. They do not feel at all that this is substance abuse. They are going to have a well-controlled beer garden. All over the world chambers of commerce, Rotary clubs, and such have beer gardens. It is a good way to control where people can have a couple of beers, watch the entertainment, and dance a little bit. They do not believe anybody is going to be in that beer garden who does not drink in front of their children or grandchildren at home. They are doing anything they can. They have security, ID checkers. People who screen it have been through the state alcohol control program, giving them ideas what to look for if someone has had too much to drink. They are closing it one hour before the band stops playing. Anybody who has any sign of being inebriated will not be served. There will be no exceptions. She believes the Chamber is handling it very, very responsibly and again thanks the council for granting that permit, which they feel is very justified.

**Marilee (Last Name Not Given) Kinney:** Said she has lived in Superior for seven and a half years. She is a little tired of being considered an outsider. She has volunteered for everything that happens in Superior. She has spent thousands of dollars in Superior. She has taken a home that was half finished and tried to make it a point of interest for Superior and has participated in many home tours. Her heart is in Superior. Please do not call her an outsider when her heart is in Superior. As a result of her heart being in Superior, she would encourage them to allow the Magma Hotel to bring back to Superior the beauty it once was. She had to admit she was getting very tired of people saying, "We want Superior to be the way it was." That is impossible. The only thing can happen to Superior is to move forward with beauty and joy and pride and she is proud to be part of that. Also, as a recovering alcoholic, if she is going to drink, she is going to drink. She is going to find a bar that is going to let her drink. She doesn't drink anymore and is working at the beer garden. She doesn't think they have to worry about drug and alcohol abuse. Yes, Superior has a major problem but it's not because Sue Anderson and the group got a permit to serve some beer at a function. It's because there are no jobs, no hope and there is no joy that is in the town. "Please let us move forward and stop calling us outsiders," she said.

**Mayor Valenzuela:** Asked if there were anyone else wishing to address council. There being none he said some council members wanted to comment.

**Council Member Gutierrez:** This is great re council comments. He thanked everyone who came up. He liked the format. It makes the meetings a little bit longer but they get more audience, more input, so he thought the interaction was great. He wanted to thank the mayor for making that change. Regarding the comment of Ms. Schablow that the future did not look great for children of Superior, he totally disagreed because he is engaged with the community as a whole and sees it from the roots up. There are some challenges but from his viewpoint there is a bright future for their kids. He has no doubt about it and in his business he is hiring kids. When he first moved here he was told that all the kids were drug addicts and lazy and would not be good for him. He finds that far from the truth. The future does look good because economic vitality is coming back. He cited new businesses and how they will give opportunities for youngsters to have part-time jobs. They are headed that way. Regarding drug abuse, he totally agreed with Ms. Schablow and Mr. Miramon. He has a radical idea. He is in a position of having grown up in the town. He would like to see the town not grant any alcohol permits at any town property, whether it be the Chamber, the Optimists, Cowboy Days, all that, because they had substance abuse meetings and big events. They all talked the talk but they don't walk the walk. It is going to be up to them as adults to set the standard. They start that as the community, they start with the town, and they start right there. It is a paradigm shift. It is kind of radical but they need to do that maybe for the next four or five years to get away from that: "Well, we can't have a good time without drinking." He encouraged Mr. Miramon and Ms. Schablow to support him in moving that forward, whether it be on a referendum to eliminate their being issued any alcohol permits. He knows it eliminates some opportunity for the Chamber but the Chamber will get over that. Also, as far as talking about BHP disclosure, he has attended a lot of BHP meetings. He doesn't know about the library but for him he has attended meetings and they have been very upfront. He thinks they are doing a good job. To Bill Holmquist re the Magma Hotel, make no doubt about it. The redevelopment of the Magma Hotel is the cornerstone of their community. It was probably the cornerstone when it was originally built. It was probably the catalyst. He kind of sees that and so is glad to see a lot of people support the fact about the variance and agrees with what Mr. Sansom is saying. It will draw more businesses in there and that goes back to what Marilee was saying about being outsiders. When people move to the community they are no longer outsiders. He has been accused of being an outsider himself. He was born and raised there and is a 4<sup>th</sup>-generation resident but is still considered an outsider. He doesn't know where that comes from but they have to stop that. They need to build up a cohesive community. He feels very strongly about that.

**Council Member Tomerlin:** No comment.

**Council Member Tameron:** No comment.

**Council Member Aguilar:** Feels kind of bad because he can't believe that anyone there would say that this council isn't for the Magma Hotel. This is the cornerstone and they all knew that. They all knew that was what they needed to do. They need to move forward on things like this. For anyone to say that they are against this or they are not for this is entirely wrong. They have never indicated anything like that to anyone. They have always been able to ask, "Hey how do you feel about this," and they have told them. But for anyone to come into this town and bring something to this town, that's our main focus. They know where they are at. So that is the one thing that is important to this council, that they move forward.

**Vice Mayor Lopez:** No comment.

**Council Member Tameron:** Said he did have one thing. Going back to Mr. Holmquist, asking if anyone had pictures of the hotel interior, Mr. Tameron asked Brenda Farthing if she had lived there at one time. Ms. Farthing said her sister did. Mr. Tameron said maybe she could get with the architect. Ms. Farthing said she would give her sister a call and ask her.

**Mayor Valenzuela:** Thanked everyone for coming out. As Mr. Gutierrez said, it is great to see the community come out and become involved, because that is what they need. They need to hear the other side and they need to interact with each other so they know what is going on in the other side of the street. They all live in the community together. Nobody is an outsider who lives there, who comes to this community and wants to give to this community. He has heard that comment before. It has been said a lot of times, but you are only an outsider if you feel like an outsider. If you are part of this community, you are part of it and you become involved. That is why they are there. They all want to see Superior strive.

Re the Magma Hotel, he said it is the cornerstone of what is going to build the community. He doesn't think anyone is there to put a stop to this project. What their staff does is make recommendations to the council. Staff makes these recommendations for these parking variances, these building variances. That doesn't necessarily mean that the council has to follow those recommendations that come from wherever they come from, from the Planning and Zoning or from staff. He has done some homework on the issue, spoken with a few different town managers in the area and every town manager told him, "Jayme you want to have a parking problem on Main Street. You want to have a parking problem here."

When it comes to the variances, the Board of Adjustment, which is the town council there, they can waive that and move forward. No one ever said that they are not going to move forward. He has heard that. He gave a perfect example, the alley of the Mitchell Building. As long as it does not create any kind of hazard, he has done his homework because Mr. Sansom has addressed him before. As long as it does not create any type of hazard or any type of public blockage or anything of that nature, it is allowable. It is allowable by the town council. It is allowable by staff. Now he knows Mr. Sansom has said he doesn't want it but what is allowable for the Magma is allowable for the Mitchell Building. They can't pick and choose what they want to do. They have to do what's best for the community. He for one is totally in favor of the project.

Re the parking issue, as long as the handicapped parking is accessible in some of those areas, and (noting to Mr. Sansom that he had counted all the parking on Main Street) those can count towards it. He has spoken with other managers, other towns. Those can count towards that parking. The town has a couple of parking areas and he is sure the town is going to look towards making some of those areas for town parking. No one there is against the project. They all want to move forward and do what is right for Superior. Just because staff makes a recommendation to the council doesn't mean that is what they are going to do. They are just doing their due diligence to tell us what the rules are, but we can waive those rules in some instances. In Florence, they have a Town Core Infill Incentive District. They waive fees and they waive parking because in the most historical old-time towns it is a problem. You can't come up with parking and parking is an issue, so that is why they create these permits they can waive. He just wanted to move forward. He thought everyone there was on the same page. They will see what happens when they move on to those items. He is glad everyone came out.

Re Ms. Farthing's comments, the mayor also asked Police Chief/Public Safety Director Lou Digirolamo if he could get a finding to the council if there were a complaint filed, so they could address the issue. Chief Digirolamo said he expected the investigation to be done some time next week. At that time he would disclose it to the council. Mayor Valenzuela said okay.

**Bill Holmquist:** Said he always thought they were on board on the whole thing. He was just trying to be excited about it and tell them what was going on. Mayor Valenzuela and others in the room said they were all excited.

**Jeannette Allison Wickwire:** Said her concern about the arsenic in the area was new people moving into the area. When they have new people coming into the area, they do not know how close they are to the tailings and what is being tested because they are not going down into the foundations of the houses. So if anybody tears down the foundations of the houses, they are going to be subject to those chemicals. This is something that really needs to be addressed. Council Member Tameron said he did check with BHP about that same thing. They hired Brown and Caldwell, an outside agency, to come in and test the air, test everything. Most of the arsenic is on the perimeter of the houses. Ms. Wickwire referenced the information that had come up in the library.

Town Attorney Chris Wencker called their attention to the fact that "CALL TO THE PUBLIC" was never intended to be a public hearing. There are some important issues that have been raised and just asking a question here and there is fine but he thinks they are going a little bit beyond. Mayor Valenzuela said okay and that they would move on to their business for the evening.

#### **I. BUSINESS, POSSIBLE DISCUSSION AND/OR ACTION ON THE FOLLOWING:**

1. PUBLIC HEARING-CUP-2011-01, Conditional Use Permit for Porch over Town Right-of-Way; Site Plan Review, VA-2011-07, Variance Request for a Reduction in the Required Number of Parking Spaces; and VA-2011-08, Variance Request to Allow First Floor Guest Rooms in the Town Center Zoning District for development of the Magma Hotel

**MOTION:** Council Member Tomerlin moved to recess the council meeting and move to the Board of Adjustments. Vice Mayor Lopez seconded. **VOTE:** The motion carried unanimously. The council moved to the public hearing at 8:17 p.m.

Ms. Wentzel said staff recommended the town council continue the public hearing on to the town council meeting of March 15, 2012 to give time for the approval of the meeting minutes for these cases by the Planning & Zoning Commission. The discussion is that the notice of the proceedings was sent to all affected property owners immediately adjacent to the development of the Magma Hotel property. The Planning & Zoning Commission had met on February 23, 2012 and heard the cases and acted upon them. Their next regularly scheduled meeting is Thursday, March 8, 2012, at which time they will review and approve the minutes. The town council will utilize the approved minutes to provide information for them to act in the capacity of the Board of Adjustments.

Council Member Tomerlin asked if they would be violating any laws if they chose not to continue it or would it just be less information. Ms. Wentzel said the property owner and his attorney were not there that evening because they expected there would be a continuation. The reason they are asking for a continuation is that there seems to be a misunderstanding by the property owner of what action took place by the Planning & Zoning. That is why they want this Board of Adjustments to have approved minutes and so the property owner's representative has had an opportunity to go back to the Planning & Zoning meeting and get a clarification as well as have the minutes approved at that time. So what they are trying to do is avoid a misunderstanding as well as have the council act

appropriately on what Planning & Zoning recommends and in the public hearing have a discussion by all interested parties on the actual actions.

Council Member Gutierrez asked if this is at the request of the developer. Ms. Wentzel said it was not at their request but because there was so much confusion, the staff recommends that since they have staff members thinking they had one action taken and property owners thinking another action was taken at a time and place, which is the Planning & Zoning Commission meeting, to actually have that approved information and bring it forward to the council so they can make an informed decision.

Council Member Gutierrez said in talking about staff they their attorney had been there. He attended that meeting. Is this coming from their attorney? Ms. Wentzel said, "The confusion? He doesn't understand the confusion as it didn't come up to him." Council Member Gutierrez said their attorney was there and they were being directed by their attorney, so what is the confusion? Ms. Wentzel said the confusion is the property owner thinks something else was recommended by Planning & Zoning and approved. Council Member Gutierrez asked if that went through their attorney. He just wanted feedback from their attorney because he was trying to figure out what the confusion is.

Town Attorney Chad Niven said there was a vote at the Planning & Zoning meeting for the variance. If Mr. Gutierrez remembered, at the meeting there was an initial vote and then he called for clarification and the Planning & Zoning Commission re-voted. Then he had been informed that the property owners of the Magma Hotel thought the opposite of what was actually voted for and he believes that is the confusion Ms. Wentzel referred to.

"The opposite being what?" asked Council Member Gutierrez asked. Attorney Niven said he believed the minutes reflected that the Planning & Zoning Commission recommended that the parking variance be granted without having the property owners getting extra parking. So they would not have to meet the ordinance parking requirements per town code. They evidently believed that they did have to meet those requirements, so that is where the confusion is.

Mr. Gutierrez said he attended that meeting and thought Mr. Niven did a good job of clarifying. Maybe the minutes were not right. Mayor Valenzuela said that is the problem they don't have the approved minutes.

Ms. Wentzel said the first inkling that there was an issue was that in the variance regarding parking, staff recommended a stipulation that 16 additional parking spaces be required. The Magma Hotel agents and owners were actually not opposed to that at all. They were in favor of that. So they had some discussion with the property owners that the Town of Superior owns a lot that is very close by and could probably negotiate 11 spaces off that lot and make some kind of deal that they would be able to utilize those spots. The attorneys had been working on that. So Attorney Niven received an email from the Magma attorney after the Planning & Zoning meeting wanting to know when they could move forward with negotiations on the property. She explained that she had called the architect and said, "You just want to do it anyway?" The architect had said yes they were happy to do whatever they needed and they would move forward. Ms. Wentzel said did they understand what the recommendation is by planning and zoning. He said they needed to get 11 parking spaces and five at the Uptown Theater. Ms. Wentzel said she didn't think that was the motion. But she said the property owners are ready and willing to make that concession or stipulation.

Ms. Wentzel said she went to Public Works Director Jed Lant and Attorney Niven and a couple of other people and there was confusion. They got the minutes. The minutes are clear. Unfortunately they do not have a tape of the meeting. So rather than have the property owners come and talk about what they want to do with this parking lot, she thought they needed to clarify that and then go back and ask the property owners if they still wanted to do that. She talked to the architect and he said he was not going to come to the meeting. He wanted to make the council aware that they have



no problems with doing offsite parking as stipulated in the staff recommendation. They are in favor of it as they don't want their hotel guests coming in and saying they don't have a place to park.

Mr. Gutierrez said he did attend the meeting and she was right that was not the way it was discussed. But filtering through all that misunderstanding, he goes back to what Mr. Sansom was saying that in reality that hotel has not changed its use historically so that could be moot depending on what action the council takes. If it was historically a hotel and there was never any parking requirements and it has not changed its use, why are they even talking about parking variances. Now saying that, they never want to miss an opportunity to create more parking. But his recommendation to council is that they go back to what Mr. Sansom was saying. It was a hotel before. Go back to the historical, it was never required, to get this project moving. It was never really the developer's responsibility from that sense. But he would recommend that to get this project moving based on historical requirements, they enter a negotiation once they get this construction started. It shouldn't be contingent from one to the other. So he knows there is some confusion but it is really up to this body to say there is some confusion and let's scrap that variance and go back to the historical part that he thought Mr. Sansom articulated about parking. Then they get the project to go forward, they get the December date. Otherwise if they are going to do variances anyway, just skip the variances and go back to what it traditionally was, get the project going. As a matter of fact, he is in favor of retracting their sales agreement for that High School Avenue property and doing that parking behind Copper Triangle. But that can be done outside of getting authorization for that building.

Ms. Wentzel said since the property owner was not there that evening, or his attorney, because they accepted that they could get the clarification at next week's Planning & Zoning meeting, staff still recommends, and the owner is amenable to wait until the 15<sup>th</sup> for the public hearing during the council of the Board of Adjustments.

Council Member Aguilar asked if they could have a special meeting prior to that. There was a discussion of the dates and whether the property owners were okay with that. Ms. Wentzel said they were fine with that. That don't want it past that. Mr. Gutierrez said he didn't think they should get into negotiation of additional parking. That could come after the fact.

Mayor Valenzuela said he did not think they were going to get into negotiation of parking. He thought what staff recommended was just having the approved minutes from the Planning & Zoning Board to move forward and that is all they are asking for. The P&Z had their meeting and just like the council does, they approve their minutes the following meeting and that is what they have to wait for from Planning & Zoning to move forward on this issue. Legally that would probably be the best thing to do instead of acting on notes, what was said, and he said, she said. The other thing is he would like the property owners to be there. Because if they have concerns it is better to have them right there in front of them to address those issues right then, don't make a decision without even telling them and then have them say, "How come you didn't tell us you were going to make a decision on it tonight?" He thought they should wait for the approved minutes and if there is a pressing issue when the Planning & Zoning meets on the 8<sup>th</sup>, he was sure they could schedule an emergency meeting to approve anything and move forward. He doesn't think that is an issue with anyone. They all want this to move forward. He doesn't think this is going to make any difference in the owner moving ahead with his plans.

Ms. Wentzel said she would like a legal opinion on having already posted the public hearing. So if they continue the public meeting to its posted date they won't have to go through the posting again with the property owners. The town attorney said it was 15 days. Ms. Wentzel said so if they continue to the 15<sup>th</sup> or whatever date they decide is appropriate notice they won't have to go out again. The Town Attorney agreed.

**MOTION:** Council Member Tomerlin moved to continue the public hearing to March 15 at the next regular council meeting. Vice Mayor Lopez seconded. **VOTE:** The motion carried unanimously.

2. Discuss/Approve/Reject: CUP-2011-01, Conditional Use Permit for Porch over Town Right-of-Way and Site Plan Approval for development of the Magma Hotel

Ms. Wentzel said this could be approved as the conditional use permit does not go with the site plan but it is also recommended to continue until the 15<sup>th</sup> so that they have the approved minutes for the site plan review that will allow them to act on the variances. The Planning & Zoning Commission met on Thursday, February 23, 2012.

**MOTION:** Vice Mayor Lopez moved to continue Item #2 until the next meeting of March 15. Council Member Aguilar seconded. **VOTE:** The motion carried unanimously.

3. Discuss/Approve/Reject: VA-2011-07, Variance Request for a Reduction in the Required Number of Parking Spaces and VA-2011-08, Variance Request to Allow First Floor Guest Rooms in the town Center Zoning District for development of the Magma Hotel

Ms. Wentzel said staff recommended continuing this until the meeting of March 15 to allow time for approval of the Planning and Zoning Commission minutes on March 8.

Mr. Gutierrez asked what the requirement was for the minutes to be done. Ms. Wentzel said three business days from the meeting. She said the minutes are completed but they cannot be approved until the next Planning & Zoning meeting. To accommodate this accelerated timeline, they swapped the Planning & Zoning meetings. Usually they have the Planning & Zoning meetings the second February of the month but because of the timeline and the necessary notifications, they moved the work session to the second Thursday and the action meeting to the 4<sup>th</sup> Thursday so they could get all this done. They are really working to get this done in a timely manner. If they had not had confusion they would probably be there tonight.

Council Member Tameron said the bottom line is they had to wait until the minutes come from Planning & Zoning before they can do anything. Ms. Wentzel said they would have to wait 15 days to continue. Mr. Holmquist from the audience said she wasn't even at the meeting. Mayor Valenzuela noted to Mr. Holmquist that they had given him his opportunity to speak. Mr. Holmquist said she is just prolonging the whole thing.

Attorney Niven said technically they don't need to wait. They could take action on the conditional use permit and variances. But he said they don't have a property owner and he is not sure the staff has been provided the recommendation from Richard Turner of Willdan. The mayor said he thought it would be a bad idea to vote on something they weren't sure of but the most important thing is the owner is not there. Vice Mayor Lopez verified with Ms. Wentzel that she had also stated the owner was okay with waiting until the 15<sup>th</sup>. Ms. Wentzel said yes and clarified for the public that everything they have done is with the consent of the property owner and he does not feel that the town is holding him back or doing any harm. He did say that he would be frustrated if he had to wait until after the 15<sup>th</sup>.

**MOTION:** Council Member Tomerlin moved to continue this item to the next regularly scheduled council meeting on the 15th. Vice Mayor Lopez seconded. **VOTE:** The motion carried unanimously.

**MOTION:** Council Member Tomerlin moved to adjourn the Board of Adjustment to the next regularly scheduled council meeting on the 15<sup>th</sup> and go back into the regular meeting. Council Member Tameron seconded. **VOTE:** The motion carried unanimously. The Board of Adjustment adjourned at 8:40 p.m.

4. Discuss/Approve/Reject: Liquor License Location Transfer for My Friends Tavern from 404 W. Main Street to 695 West Main Street

Ms. Wentzel presented the staff recommendation for approval. She said Mr. Chavez was not there that evening as his work took him out of town. He apologizes and is available if there are questions.

Mr. Gutierrez commented that he is not really against this as they need more businesses on Main Street. He is torn primarily because of Mr. Chavez' activities at the previous location he was at, Porter's, where they had wet T-shirt contests and motorcycles burning out rubber inside and burning smoke. It was kind of irresponsible especially when related to alcohol. When he sees what happened the last time he was operating a business, it is a good thing and a bad thing, so he is kind of in-between and not sure how he was going to vote. He thinks it is something council should consider. He knows they all have relationships with this particular individual but he thought they ought to go past that and look at it objectively.

Ms. Wentzel said none of those occurrences affected his license status. She had checked with the liquor board. He has no violations on his record for the liquor license.

Mr. Gutierrez said he guessed when you think about a liquor license, it is not about the license but about a perception that they create about "wildly crazy" type of things, anything goes. He thinks that is what they are trying to move away from, even though it doesn't affect the license.

Council Member Tameron asked if Mr. Chavez was ever cited for breaking the law. Mr. Gutierrez said not breaking the law. Mr. Tameron said there is no law that he broke. Mr. Gutierrez said that he is not saying that. Mr. Tameron said they cannot tell him what to do as long as he is following the law. Mr. Gutierrez said he is not saying that. Mayor Valenzuela asked for any other comment. Mr. Tameron said he thought they could not tell him how to run his bar as long as he is not breaking the law. It is not about how he runs his bar, it is just transferring it to one location from another.

**MOTION:** Council Member Aguilar moved to approve the transfer of the liquor license location for My Friends Tavern from 404 West Main Street to 695 West Main Street. Vice Mayor Lopez seconded.

**VOTE:** The motion carried unanimously.

5. Discuss/Approve/Reject: Letter to the U.S. Forest Service commenting on various road changes in the Tonto Forest which encompasses Superior, Arizona

Ms. Wentzel said the item had been brought to the council's attention at the January 19, 2012 meeting. At that time, they did not have information on proposed changes. The comment period had been extended several times with the current date for comment being March 15.

Ms. Mila Lira addressed council on a meeting she had participated in with Globe District personnel regarding the proposed changes surrounding Superior. Ms. Pam Rabago also provided information.

**MOTION:** Council Member Aguilar moved to approve a letter to the U.S. Forest Service commenting on the Environmental Assessment for Tonto National Forest Motorized Travel Management. Vice Mayor Lopez seconded. Attorney Wencker asked that the motion specify the recommendations or say "as presented." Mr. Aguilar added: "as presented here" to the motion. **VOTE:** The motion passed unanimously.

6. Discuss/Approve/Reject: Enter into negotiations with Ms. Jean Casias regarding property located at 957 S. Stone Avenue.

Mayor Valenzuela asked Ms. Wentzel to read the discussion for the public. She said that their attorneys previously provided advice regarding foreclosure upon the property to vacate liens the Town held for sewer and refuse on the above-referenced address. While the property was held in the name of "The Estate of" Vianes Casias, the judgment was filed and granted in the name of "Vianes J. Casias, a Single Man, XYZ Companies A-Z; and John Does 1-10." Mrs. Jean Casias had not been a party to the action, and they believe that the action may have been served upon Vianes J. Casias, who is the son. Mrs. Casias indicated that she had spoken to the previous Town Manager and agreed to make payments on the outstanding sewer balance so that the property would not be affected; however, there was no follow-up. The Town's records indicate that there was a Demand Letter issued on April 18, 2008 to Vianes Casias or Jean Casias, but it was directed to the 957 S. Stone Avenue address. This is not where Mrs. Casias resides or receives her mail, so she never received the letter. It also appears that the Demand Letter was served upon the son, Vianes Casias, instead of Jean Casias, the widow of Vianes Casias (senior) and owner of the property.

Council moved to executive session (**ITEM J-2, A-3**) for legal advice with the town attorneys on this item. They returned to open session and then to a second executive regarding two unrelated items before returning to Item #1-6 for the vote.

**MOTION:** Council Member Tomerlin moved to enter into negotiations with Ms. Jean Casias regarding property located at 957 S. Stone Avenue with the recommendations provided by staff. Council Member Tameron seconded. **VOTE:** The motion passed unanimously.

#### **J. EXECUTIVE SESSION**

The Town Council may or may not vote to go into Executive Session pursuant to ARS38-431.03 (A-1) (A-3) & (A-7)

1. A-1—PERSONNEL
2. A-3—LEGAL ADVICE WITH ATTORNEY: Discussion or consultation for legal advice with the attorney or attorneys of the Town regarding: the status of litigation involving Dr. Glenn Wilt; the status of the property involving Ms. Jean Casias; and establishment of local rules regarding the opening of medical marijuana dispensaries

**MOTION:** Council Member Tomerlin moved to go into executive session pertaining to A-3, legal advice with attorney as to the status of the property involving Ms. Jean Casias. Vice Mayor Lopez seconded. **VOTE:** The motion passed unanimously.

The council entered executive session at 9 p.m. and returned at 9:25 p.m.

**MOTION:** Vice Mayor Lopez moved to go into executive session regarding A-3, legal advice with attorney as to the status of litigation involving Dr. Glenn Wilt and establishment of local rules regarding the opening of medical marijuana dispensaries. Council Member Tomerlin seconded. **VOTE:** The motion passed unanimously.

The council entered executive session at 9:27 p.m. and returned at 9:57 p.m.

3. A-7—LEGAL ADVICE WITH ATTORNEY REGARDING SALE, LEASE OR PURCHASE OF REAL PROPERTY

#### **K. COUNCIL COMMENTS**

**Council Member Aguilar:** No comment.

**Council Member Gutierrez:** Regarding the Magma Hotel, it is going to be very positive. In regard to the parking issue, he suggested talking to the developer about possibly demolishing the building on the property they own to provide staff parking for the hotel. Ms. Wentzel said they had pending escrow and lien issues and don't own that property outright. He suggested Ms. Wentzel follow up on it.

**Council Member Tomerlin:** No comment.

**Council Member Tameron:** No comment.

**Vice Mayor Lopez:** Had no comment but was wondering about the work session regarding the ambulance. Are they doing that next time around? Ms. Wentzel said yes.

**Mayor Valenzuela:** The only comment he had is in reference to the parking, maybe Ms. Wentzel could get the Magma Club front parking. It belongs to Resolution because they own that part of the parking lot. He thought that would alleviate a lot of this issue. Ms. Wentzel said that was an excellent idea but she knows from past experience that it would take years to get that lot. There is a lot of work that would have to be done that would take a lot of time. Mayor Valenzuela said the other option would be that she had mentioned once before that the Presbyterian Church was willing to enter into those negotiations to make that a parking lot. Ms. Wentzel said that was in 2005 that the church said they would entertain having their lot improved with the restriction of being able to park on Sunday mornings during their church. That had already been negotiated and she was sure they would entertain it again

#### **L. ADJOURNMENT**

**MOTION:** Council Member Tameron moved to adjourn. Vice Mayor Lopez seconded. **VOTE:** The motion carried unanimously. Mayor Valenzuela adjourned the meeting at 10:10 p.m.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Council Meeting of the Town Council of the Town of Superior held on the 1<sup>st</sup> day of March, 2012. I further certify that the meeting was duly called and held and that a quorum was present.

/s/

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**Rita M. Wentzel, Interim Town Clerk**

These minutes were compiled and transcribed by Cindy Tracy, an independent contractor. Final editing of these minutes and their content is completed and verified by Town of Superior staff members.